

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL NO. 3:03CR12
	§	
KENNY DARREN CALDWELL (5)	§	

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on February 8, 2012, to determine whether Defendant violated his supervised release. Defendant was represented by Frank Henderson. The Government was represented by Ernest Gonzalez.

On June 9, 2004, Defendant was sentenced by Chief U.S. District Judge Leonard Davis to a sentence of 90 months imprisonment followed by a 5-year term of supervised release, for the offense of conspiracy to manufacture, distribute or possess with intent to manufacture, distribute or dispense methamphetamine. Defendant began his term of supervision on December 20, 2010.

On January 18, 2012, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision ("the Petition") (Dkt. 529). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall refrain from any unlawful use of a controlled substance. Defendant shall submit to one drug test within 15 days of release from

imprisonment and at least two periodic drug tests thereafter, as determined by the court; (2) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substances, except as prescribed by a physician; (3) Defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer; (4) Defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer; and (5) Defendant shall participate in a program of testing and treatment for drug abuse, under the guidance and direction of the U.S. Probation Office, until such time as Defendant is released from the program by the probation officer.

The Petition alleges that Defendant committed the following violations: (1) Defendant submitted urine specimens that tested positive for methamphetamine on August 16 and 29, 2011, and January 10, 2012; (2) Defendant had contact with a convicted felon, Belinda Sage, after being instructed by the U.S. Probation Office in December 2010 he could have no contact; and (3) Defendant failed to report for drug testing at Pierce & Agnew, Paris, Texas, on December 6, 2011, and January 6, 2012. In addition, Defendant submitted a urine specimen on December 7, 2011, that was determined to be a diluted specimen by Alere Toxicology.

At the hearing, Defendant entered a plea of true to the alleged violations, and the parties reached an agreement as to sentence. Defendant waived his right to allocute before the district judge and his right to object to the report and recommendation of this Court. The Court finds that Defendant has violated the terms of his supervised release and that his supervised release should be revoked.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984 and having considered the arguments presented at the February 8, 2012 hearing, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of twenty-one (21) months, with no supervised release to follow. The Court further recommends that Defendant's term of imprisonment be carried out in the Bureau of Prisons facilities located in Forrest City, Arkansas, if appropriate.

SIGNED this 7th day of March, 2012.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE